

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Andres Gomez,

Plaintiff,

v.

Cuvaison, Inc., a California
Corporation;

Defendants.

Case No.

**Complaint for Damages and
Injunctive Relief for Violations
of: American's With Disabilities
Act; Unruh Civil Rights Act**

**NOT RELATING TO A
CONSTRUCTION-RELATED
BARRIER AS DEFINED IN CAL.
CIV. CODE § 55.3**

Plaintiff Andres Gomez ("Plaintiff") complains of Cuvaison, Inc., a California Corporation, ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a visually-impaired individual and a member of a protected class of persons under the Americans with Disabilities Act. Plaintiff Talkback or similar software to navigate websites and applications on electronic devices. Plaintiff is legally blind¹ and cannot use an electronic device without

¹ Plaintiff uses the terms "visually-impaired" or "blind" interchangeably to refer to individuals, including himself, who meet the legal definition of blindness. (visual acuity of 20/200 or worse.) Some individuals who meet these criteria have no vision, others have limited vision.

1 assistance of screen-reader software (“SRS”)

2 2. Defendant Cuvaision, Inc. (“Cuvaision, Inc.”) owned or operated
3 Cuvaision Winery located in Napa County, California, in March 2021 and
4 August 2021.

5 3. Defendant Cuvaision, Inc. owns or operates Cuvaision Winery located in
6 Napa County, California, currently.

7 4. Defendant Cuvaision, Inc. owned or operated Cuvaision Winery website,
8 with a root domain of: <https://www.cuvaision.com/> and all related domains,
9 sub-domains and/or content contained within it, (“Website”) in March 2021
10 and August 2021.

11 5. Defendant Cuvaision, Inc. owns or operates Cuvaision Winery’s Website
12 currently.

13 6. Plaintiff does not know the true names of Defendants, their business
14 capacities, their ownership connection to the property and business, or their
15 relative responsibilities in causing the access violations herein complained of
16 and alleges a joint venture and common enterprise by all such Defendants.
17 Plaintiff is informed and believes that each of the Defendants herein, is
18 responsible in some capacity for the events herein alleged or is a necessary
19 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
20 the true names, capacities, connections, and responsibilities of the Defendants
21 are ascertained.

22
23 **JURISDICTION & VENUE:**

24 7. The Court has subject matter jurisdiction over the action pursuant to 28
25 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
26 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (“ADA”)

27 8. This court has supplemental jurisdiction over Plaintiff’s non-federal
28 claims pursuant to 28 U.S.C. § 1367 because Plaintiff’s Unruh claims are

1 formed from the same case and/or controversy and are related to Plaintiff's
2 ADA claims. A violation of the ADA is a violation of Unruh. (Cal. Code §51(f).

3 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b). Defendant
4 is subject to personal jurisdiction in this District due to its business contacts
5 with the District, and a substantial portion of the complained of conduct
6 occurred in this District.

7
8 **FACTUAL ALLEGATIONS:**

9 10. Plaintiff is a legally blind person and a member of a protected class
10 under the ADA. Plaintiff is proficient with and uses SRS to access the internet
11 and read internet content on electronic devices.

12 11. Plaintiff cannot use an electronic device without the assistance of
13 screen reader software. ("SRS").

14 12. Cuvaision, Inc. operates privileges, goods or services out of a physical
15 location in California. These services are open to the public, places of public
16 accommodation, and business establishments.

17 13. The Website is a nexus between Cuvaision, Inc. customers, and the
18 terrestrial based privileges, goods or services offered by Cuvaision, Inc..

19 14. Cuvaision, Inc. offers websites and digital booking as some of the
20 facilities, privileges, and advantages offered by Defendants to patrons of
21 Cuvaision, Inc. in connection with their patronage at Cuvaision, Inc..

22 15. Among the services offered include: details about the wines and
23 Cuvaision, Inc. itself, location and contact information; Cuvaision, Inc. policies;
24 information about wine on sale, deals and promotions without any ambiguity
25 as to the amenities that would be available to the patron.

26 16. Plaintiff was a prospective customer who wished to access Defendant's
27 goods and services of Cuvaision, Inc..

28 17. Plaintiff visited the Website in March 2021 and August 2021 with the

1 intent get information about wines sold at the vineyards and wine tasting tours.

2 18. When Plaintiff attempted to navigate the Website, Plaintiff encountered
3 numerous accessibility design faults that prevented him from navigating the
4 site successfully using SRS. Investigation into his experience revealed barriers,
5 including, but not limited to:

- 6 a. Images on the website lack a text equivalent readable by
7 SRS.
- 8 b. The website contains script elements that are not
9 identified with functional text readable by SRS.
- 10 c. The visualization of the webpage contains impermissibly
11 low contrast enabling differentiation of background and
12 foreground elements.

13 19. These inaccessible elements rendered the ostensibly “accessible”
14 elements inaccessible as a result of difficulty and confusion navigating the
15 numerous inaccessible elements.

16 20. Currently, the defendants either fail to provide an accessible website or
17 Defendants have failed to maintain in working and useable conditions those
18 website features required to provide ready access to persons with disabilities.

19 21. Despite multiple attempts to access the Website using Plaintiff’s
20 electronic device, Plaintiff has been denied the full use and enjoyment of the
21 facilities, goods and services offered by Defendants as a result of the
22 accessibility barriers on the Website.

23 22. Plaintiff personally encountered accessibility barriers and has actual
24 knowledge of them.

25 23. By failing to provide an accessible website, the defendants denied
26 Plaintiff full and equal access to the facilities privileges or advantages offered
27 to their customers.

28 24. Plaintiff has been deterred from returning to the Website as a result of

1 these prior experiences.

2 25. The failure to provide accessible facilities created difficulty and
3 discomfort for the Plaintiff.

4 26. If the website had been constructed equally accessible to all individuals,
5 Plaintiff would have been able to navigate the Website and find information on
6 wines on sale.

7 27. Additionally, Plaintiff is a tester in this litigation and seeks future
8 compliance with all federal and state laws. Plaintiff will return to the Website
9 to avail himself of its goods and/or services and to determine compliance with
10 the disability access laws once it is represented to him that Cuvaision, Inc. and
11 Website are accessible.

12 28. Plaintiff is currently deterred from doing so because of Plaintiff's
13 knowledge of the existing barriers and uncertainty about the existence of yet
14 other barriers on the Website. If the barriers are not removed, Plaintiff will
15 face unlawful and discriminatory barriers again.

16 29. The barriers identified above violate easily accessible, well-established
17 industry standard guidelines for making websites accessible to people with
18 visual-impairments that use SRS to access websites. Given the prevalence of
19 websites that have implemented these standards and created accessible
20 websites, it is readily achievable to construct an accessible website without
21 undue burden on Cuvaision, Inc. or a fundamental alteration of the purpose of
22 the Website.

23 30. Compliance with W3C Web Content Accessibility Guidelines
24 ("WCAG") 2.0 AA standards are a viable remedy for these deficiencies and a
25 standard that has been adopted by California courts for website accessibility.

26 31. It's been established that failure to remove these inaccessible conditions
27 violates the ADA and California law and requiring compliance with industry
28 access standards is a remedy available to the plaintiff.

1 32. The Website was intentionally designed, and based on information and
 2 belief, it is the Defendants' policy and practice to deny Plaintiff access to the
 3 Website, and as a result, denies the goods and services that are otherwise
 4 available to patrons of Cuvaision, Inc.

5 33. Due to the failure to construct and operate the website in line with
 6 industry standards, Plaintiff has been denied equal access to Defendant's
 7 vineyards and the various goods, services, privileges, opportunities and
 8 benefits offered to the public by Cuvaision, Inc.

9 34. Given the nature of the barriers and violations alleged herein, the
 10 plaintiff alleges, on information and belief, that there are other violations and
 11 barriers on the website, and/or at Cuvaision, Inc., that relate to his disability. In
 12 addition to the barriers he personally encountered, Plaintiff intends to seek
 13 removal of all barriers on the Website that relate to his disability. See *Doran v.*
 14 *7-Eleven* (9th Cir. 2008) 524 F.3d 1034 (holding that once a plaintiff
 15 encounters one barrier, they can sue to have all barriers that relate to their
 16 disability removed regardless of whether they personally encountered the
 17 barrier).

18 35. Plaintiff will amend the complaint, to provide further notice regarding
 19 the scope of the additional demanded remediation in the event additional
 20 barriers are uncovered through discovery. However, please be on notice that
 21 the plaintiff seeks to have all barriers related to his disability remedied.
 22

23 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 24 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 25 Defendants.) (42 U.S.C. section 12101, et seq.)

26 36. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 27 again herein, the allegations contained in all prior paragraphs of this
 28 complaint. Cuvaision, Inc. is a public accommodation with the definition of

1 Title III of the ADA, 42 USC § 12181.

2 37. The website provided by the Defendant is a service, privilege or
3 advantage and extension of Cuvaision, Inc. physical presence and terrestrial
4 services.

5 38. When a business provides services such as a website, it must provide an
6 accessible website.

7 39. Here, an accessible website has not been provided. A failure to provide
8 an accessible website is unlawful discrimination against persons with
9 disabilities.

10 40. Under the ADA, it is an act of discrimination to fail to ensure that the
11 privileges, advantages, accommodations, facilities, goods and services of any
12 place of public accommodation is offered on a full and equal basis by anyone
13 who owns, leases, or operates a place of public accommodation. *See*: 42 U.S.C.
14 § 12182(a). Discrimination is defined, inter alia, as follows: “A failure to make
15 reasonable modifications in policies, practices, or procedures, when such
16 modifications are necessary to afford goods, services, facilities, privileges,
17 advantages, or accommodations to individuals with disabilities, unless the
18 accommodation would work a fundamental alteration of those services and
19 facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).”

20 41. Here, the failure to ensure that the accessible facilities were available
21 and ready to be used by the plaintiff is a violation of the law.

22 42. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
23 set forth and incorporated therein, Plaintiff requests relief as set forth below.

24
25 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
26 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
27 Code § 51-53.)

28 43. Plaintiff repleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this
2 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
3 that persons with disabilities are entitled to full and equal accommodations,
4 advantages, facilities, privileges, or services in all business establishment of
5 every kind whatsoever within the jurisdiction of the State of California. Cal.
6 Civ. Code §51(b).

7 44. The Unruh Act provides that a violation of the ADA is a violation of the
8 Unruh Act. *Cal. Civ. Code* § 51(f).

9 45. Defendants’ acts and omissions, as herein alleged, have violated the
10 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
11 rights to full and equal use of the accommodations, advantages, facilities,
12 privileges, or services offered.

13 46. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
14 discomfort or embarrassment for the plaintiff, the defendants are also each
15 responsible for statutory damages, i.e., a civil penalty. *Cal. Civ. Code* §
16 55.56(a)-(c).

17 47. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
18 set forth and incorporated therein, Plaintiff requests relief as set forth below.

19
20 **PRAYER:**

21 Wherefore, Plaintiff prays that this Court award damages and provide
22 relief as follows:

23 1. A Declaratory Judgment that at the commencement of this action
24 Defendants were in violation of the requirements of the ADA due to
25 Defendants’ failures to take action to ensure that its Website was fully
26 accessible to and independently usable by blind and visually-impaired
27 individuals.
28

1 2. For equitable nominal damages for violation of civil rights. See
2 Uzuegbunam v. Preczewski, 141 S.Ct. 792 (2021) and any other equitable
3 relief the Court finds appropriate.

4 3. Pursuant to 42 U.S.C § 12181, a preliminary and permanent injunction
5 enjoining Defendants from violating the ADA with respect to its Website.

6 4. Damages under the Unruh Civil Rights Act § 51², which provides for
7 actual damages and a statutory minimum of \$4,000 for each offense.

8 5. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
9 to 42 U.S.C. § 12205; and *Cal. Civ. Code* § 52.

10
11 Dated: March 15, 2022

CENTER FOR DISABILITY ACCESS

12
13 

14 By: _____

15 Amanda Seabock, Esq.
16 Attorney for Plaintiff

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26 _____
27 ² Note: the plaintiff is not invoking section 55 of the California Civil Code and
28 is not seeking injunctive relief under the Disabled Persons Act at all.